Q&A The State of State Courts

Conversation With William C. Vickrey

William C. Vickrey Administrative Director of the Courts

Administrative Director of the Courts William C. Vickrey began his career as a parole agent in the Department of Corrections in Utah in 1972 and advanced to become director of adult corrections for that state by 1983. He entered the field of court administration in 1985, when he was named Utah's state court administrator. Mr. Vickrey moved on to face the biggest challenge of his career in 1992, when he took over as California's Administrative Director of the Courts. Since then he has shepherded California's state courts through what many regard as the greatest period of reform in their 150-year history.

Mr. Vickrey attributes much of his success as a court administrator to his association with the National Center for State Courts (NCSC), which provides leadership and services to state courts. His involvement with the NCSC dates back to 1985, and he has served on its board of directors for the last three years(as vice-chair in 1998–1999). Mr. Vickrey's tenure on the board of directors ends this August. Court News *spoke with him regarding the NCSC and the state of state courts today.*

You've spent most of your career in the areas of corrections and court administration. What trends or significant changes have you seen over the years?

The state courts across the country have had a number of challenges that we all have faced in common. State court systems in the last 15 to 20 years have gone through an era of major reform of how we administer our justice system and, in particular, how we administer the court system. If we look back over the last 20 years, for the first time courts began to look at research data about how we fulfill our responsibilities. This includes initial studies on how long it took cases to get to trial, lengths of trials, and additional basic information that really had never existed before. Through the leadership of the NCSC, court leaders began to access this kind of information that allowed them to rely on firm data and take a more business-like approach to court administration. Also I think more recently we've seen the involvement of the federal government in ways that we've never seen before. The impact of federal policies on our state trial court systems has increased in the areas of family law, child support, dependency, criminal justice policies, victims' rights, and a number of other issues.

The fact is that the changes our courts have made in the past couple of years in terms of state funding and unification have been made more quickly and more effectively than in most other states.

What role does technology play in the evolution of the court system?

We need to be able to use technology more effectively, not only to obtain information we need but to provide public access to the courts. For example, members of the bar or other components of the civil and criminal justice system should have access to basic information such as filings and judgment dockets. Litigants should have the ability to file pleadings electronically. This kind of technology is fairly standard practice in the private sector but is relatively new to the courts.

What do you see as the most urgent issues in state court administration?

Certainly the public's trust and confidence is the foundation of our court system and is a major issue that we are facing. We have significant challenges in that area, including the economic barriers to access due to the cost and length of litigation. The way we treat individuals interacting with the courts is very important whether they call on the phone, walk up to the clerk's office, or visit the courtroom. We need to also be concerned with the perception of the public as to whether people are treated differently based upon economic status, gender, ethnicity, or culture. The courts are not necessarily the cause of these problems, but it is the responsibility of the courts to assume the leadership for dealing with those issues, in regard to both the reality and the public's perception of the situation. We need to learn to conduct our business in a way that accommodates and responds to the public.

Another major issue for all state courts is preserving the neutrality and independence of judges in the courtroom. We face several challenges in that area. The cost of judicial elections is becoming more problematic. Too often it makes it possible for people to target judges because they dislike their decisions. It is also more difficult for us to compensate our judiciary in order to compete with private practices. To attract jurists with the highest ethical standards, work ethics, and professional experience, we need to provide not only reasonable compensation by public standards but also adequate support in terms of well-trained staff, law clerks, technology, and workloads.

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From your experience with the NCSC, how do California courts compare with the rest of the nation? How is the California court system perceived by national court leaders?

In almost all jurisdictions, state courts are experimenting with new approaches and are going through periods of change. These changes are in a variety of different areas, including the selection and retention of judges, court funding, and jurisdictional issues. California, on all of these issues, is viewed outside our system as experiencing those challenges by a factor of 10. Not only our size but the range of issues in our state is more diverse than most other states. California is diverse not only in terms of its economy, geography, and population, but also in its philosophies and politics.

But our state has always been seen as having an excellent judicial system and one that has been willing to take risks in an effort to improve. The fact is that the changes our courts have made in the past couple of years in terms of state funding and unification have been made more quickly and more effectively than in most other states. In addition, when you take into account the improvements we've made in areas such as jury reform with the one-day/one-trial system and the newly created jury instructions, it is clear that California continues to be a leader in the administration of justice. However, there are others who feel our court system is too large to be governable. I do think our challenges are more complex. If it's a chess game somewhere else, then it's three-dimensional chess here.

How has your involvement with the NCSC improved your abilities as a court administrator?

Since 1972, the NCSC has been the national standard bearer for our state court systems. It has focused attention and provided support for research on a national scope. It has been the vehicle to permit the sharing of information between one state jurisdiction and another. It has made it possible for courts to respond more rapidly to the demands and challenges we are facing. It also enables state court systems to interact effectively with Congress at the federal level, which has been essential in the last decade.

This national treasure for the state courts has been led by two Californians over the last 10 years. Larry Sipes was the president of the NCSC for five years, and today Roger Warren, a former superior court judge in Sacramento, is providing dynamic leadership for the center. Under his leadership, the center continues to respond to national issues such as technology and public trust and confidence, as well as maintain its excellent research and public information programs.

Isn't your description of the support and services that the NCSC provides the country's state court systems somewhat consistent with what the Administrative Office of the Courts [AOC] delivers to California's trial and appellate courts?

I think that is true to a large extent. The AOC will obviously always have certain direct statutory administrative responsibilities in terms of our relationship with our two sister branches of government in California. However, our primary goal for the AOC is for it to be an organization that supports the trial and appellate courts by providing resources such as education, communication tools, and court services that help them meet the needs of the public. That includes conferences and seminars, technical assistance, advocacy before the Legislature, and serving as a knowledge organization that creates and facilitates the exchange of information for our courts around the state. ■

Deferred Entry of Judgment May Be Available to Three-Strikes Defendants

JUDGE J. RICHARD COUZENS
SUPERIOR COURT OF PLACER COUNTY

The three-strikes law specifies that a convicted strike offender shall not be committed "to any facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center." (Pen. Code, §§ 667(c)(4), 1170.12(a)(4).) Only a few published cases have discussed the availability of diversion or deferred entry of judgment in the context of the three-strikes law.

McGrath v. Superior Court (1995) 36 Cal.App.4th 1097 held that, notwithstanding the express provisions of the three-strikes law, courts retained jurisdiction to grant diversion in appropriate cases. The California Supreme Court dismissed the appeal from that decision.

In *Butler v. Superior Court (People)* (1998) 63 Cal.App.4th 64, a third-strike defendant was denied eligibility for deferred entry of judgment under Penal Code section 1000 et seq. because of prior strike convictions. The Court of Appeal denied defendant's writ of mandate because section 1000(b) states in unequivocal terms that the sole remedy of a defendant wishing to challenge a finding of ineligibility is a postconviction appeal.

On a related subject, *People v. Superior Court (Roam)* (1999) 69 Cal.App.4th 1220 held that a court has no jurisdiction to release a convicted three-strikes defendant on supervised recognizance in order to attend a drug rehabilitation program prior to sentencing.

The most recent decision on this subject is *People v. Davis* (2000) 79 Cal.App.4th 251. *Davis* holds that the three-strikes law does not preclude a defendant's eligibility for deferred entry of judgment under section 1000 et seq. solely because of the existence of prior strike convictions. The provisions of the three-strikes law that mandate a state prison commitment come into play only when the defendant is *convicted* of a felony offense. The guilty plea mandated by the deferred entry of judgment program is not a conviction until the defendant fails the program and the judgment is entered on the plea under section 1000.1(d). The court found that the deferred entry of judgment program differs in several significant respects from diversion. Most significantly, diversion is a preplea order of the court; deferred entry of judgment requires that a guilty plea be entered. Since the deferred entry of judgment program is not the functional equivalent of diversion, reasoned the court, the express provisions of the three-strikes law prohibiting diversion do not preclude a three-strikes defendant's qualifying under section 1000.

Although *Davis* is not final, some courts may wish to grant three-strikes defendants deferred entry of judgment in appropriate circumstances. The following procedures, generally outlined in Penal Code section 1000 et seq., should be observed:

1. The defendant should enter a plea to the charges and *admit the prior strikes*. (Pen. Code, § 1000.1(b).)

2. The defendant should be referred for evaluation by the probation department and, if found eligible, be placed in the deferred entry of judgment program. (Pen. Code, §§ 1000.1(b), 1000.2.)

3. If the defendant fails the program, sentence should be imposed in accordance with the three-strikes law. (Pen. Code, § 1000.3.)

4. Nothing in *Davis* suggests that courts do not have the authority to specify an offense as a misdemeanor under Penal Code section 17(b) or dismiss any strikes under section 1385. In addition, nothing suggests that this authority be restricted to being exercised either before deferred entry of judgment is granted or when the defendant returns after a failure in the program. In exercising such discretion, however, courts may wish to consider the benefits of having the potential of a strike sentence to encourage defendants to successfully complete the program. ■

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Judge J. Richard Couzens

Judge Couzens is a member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

Online Access to More Appellate Cases

Since January, litigants, attorneys, and the public have been able to retrieve up-to-date information on cases from the Court of Appeal, First Appellate District (San Francisco), via the Internet. In June, online case information was made available for four more appellate districts: the Second (Los Angeles and Ventura), Third (Sacramento), Fourth (San Diego, Riverside, and Santa Ana), and Sixth (San Jose).

"Users rate the site as a top-rate achievement and a wonderful tool for viewing case information firsthand," commented Ron Barrow, Clerk of the Court of Appeal, First Appellate District. "The automatic e-mail notification system is also receiving very positive reviews." According to Mr. Barrow, an average of 47,265 screens per month have been viewed since the First Appellate District's site went into operation.

Case information is updated hourly throughout the business day and can be found at http://appellatecases.courtinfo.ca.gov/. Searches for case information can be initiated by supplying the trial or appellate case number, case caption, attorney, party, or calendar date. Court calendar information can be obtained for a date or range of dates. In addition, e-mail notifications of specific case activity can be set up by providing a case number and a recipient's e-mail address.

The case information service is the result of a joint effort by the Courts of Appeal and the Information Services Division of the Administrative Office of the Courts. ■

COURT INTERPRETERS PROGRAM

Year 2000 Examination Dates

Following are the dates of court interpreter examinations being offered through the end of this year. The exams will take place in Contra Costa, Fresno, Los Angeles, Sacramento, and San Diego Counties. To become a certified court interpreter, an applicant must complete both the oral and written examinations.

Written Exams	**Filing Dates**	**Exam Dates**
OTS (other certified languages—Arabic, Cantonese, Japanese, Korean, Portuguese, Tagolog, and Vietnamese)	July 7	August 5
Registered (English fluency exam only)	July 14	August 12
Spanish	October 20	November 18

Oral Exams	**Filing Dates**	**Exam Dates**
Spanish	July 7	August 7–September 1
OTS (other certified languages—Arabic, Cantonese, Japanese, Korean, Portuguese, Tagolog, and Vietnamese)	August 4	September 4–29
Registered (English fluency exam only)	August 11	September 11–29

To request an exam application, please call Cooperative Personnel Services at 916-263-3490 (24 hours a day).

● For more information, contact Debbie Chong-Manguiat, Court Interpreters Program, 415-865-7596.

Thomas A. Henderson

National Court Agenda 2000

THOMAS A. HENDERSON, Ph.D.
EXECUTIVE DIRECTOR, OFFICE OF GOVERNMENT RELATIONS
NATIONAL CENTER FOR STATE COURTS

Watch on Washington

A presidential election year is usually not a time for bold policy innovations, and this year is no exception. President Clinton has his eye on posterity and therefore is spending more time on foreign affairs than on domestic policy. The political appointees heading up agencies are busy looking for their next jobs because none of them will survive January 2001 no matter who wins in November. Three of the five heads of the grant-making agencies in the Department of Justice have already left (Laurie Robinson, Office of Justice Programs; Jeremy Travis, National Institute of Justice; and Shay Bilchik, Office of Juvenile Justice and Delinquency Prevention). In Congress the natural partisan tension of an election year is heightened this year by the fact that both parties have an excellent chance of winning control of the House of Representatives, given the close division in the current session (Republicans have only an eight-vote majority) and the absence of a clear frontrunner in the presidential race.

We can also expect that, as has been the pattern for the last three years, most of the 13 separate appropriations bills will be rolled into one or two giant omnibus bills, negotiated at the last minute by a few members of the House and Senate leadership in a closed room and signed by the President after everyone goes home.

As you might expect, these factors have an effect on the prospects for issues of concern to state courts. The result is to open up opportunities for some parts of our agenda and postpone any meaningful action on others. Let me illustrate.

APPROPRIATIONS

The appropriations process will, in all probability, be the only significant legislation that emerges from this Congress. Everything else is likely to be lost in the partisan name-calling. We can also expect that, as has been the pattern for the last three years, most of the 13 separate appropriations bills will be rolled into one or two giant omnibus bills, negotiated at the last minute by a few members of the House and Senate leadership in a closed room and signed by the President after everyone goes home.

What this means for courts is that there will be very little money in the grant programs that is not earmarked for specific programs in the states. Since omnibus bills are put together with very little public exposure, leaders can use them to reward friends and press their own agendas. In fiscal year 2000, for example, of the $50 million appropriated for the so-called discretionary portion of the Byrne grant program (that is, the portion available to fund the programs and initiatives developed by the federal agency administering the $500 million block grant program), all but $3 million was earmarked for pet projects of individual members of Congress. Next year it is entirely possible that even the $3 million will be earmarked.

This year, full funding for the State Justice Institute (SJI) is the highest priority of the four court associations—the Conference of Chief Justices (CCJ), the Conference of State Court Administrators (COSCA), the American Judges Association (AJA), and the National Association for Court Management (NACM). Since it was created in 1986, SJI has had a difficult time maintaining its financial support in Congress. Its funding has been at a minimum level for the last three years and was just $6.8 million in fiscal year 2000. State court leaders have pressed for $15 million this year. SJI has enjoyed good support in the Senate, but the House has always begun the conference discussions with a zero appropriation, and it finally acceded to the previous year's figure of $6.8 million. One positive sign this year is that the appropriations bill that was reported out of the House in June included $4.5 million for SJI. What this means for the final figure remains to be seen, but prospects are certainly better if negotiations between the two chambers begin with money from both sides on the table.

CHILD SUPPORT ENFORCEMENT

Congresswoman Nancy Johnson (R-Conn.) introduced House Bill No. 4469, the Child Support Distribution Act of 2000, on May 16, 2000. The main purpose of the legislation is to adjust the distribution of child support payments, which will have a minimal impact on courts. Title III of the bill, however, will have an impact. The proposed legislation would allow states the option of sharing their databases and certain Title IV-D collection tools with public and private non–IV-D child support enforcement agencies.

For the six to eight state court systems that have court-based child support enforcement services, this provision would be beneficial. It is, however, a very controversial issue in the child support community. Many state child support programs are opposed to opening up access, particularly to the private agencies. Among other things, they raise concerns of confidentiality, privacy, fees, and potential misuse of the data and/or tools.

CHILD WELFARE

Senators Mike DeWine (R-Ohio) and John D. Rockefeller (D-W.Va.) introduced two bills to replace Senate Bill No. 708, the Strengthening Abuse and Neglect Courts Act, to overcome the parliamentary problems. The first, Senate Bill No. 2271, the Training and Knowledge Ensure Children a Risk-Free Environment (TAKE CARE) Act, contains provisions for (1) judicial training, (2) technical assistance to states, and (3) state guidelines for attorney standards. Sen. No. 2271 has been referred to the Senate Finance Committee. The second bill, Senate Bill No. 2272, the Strengthening Abuse and Neglect Courts Act, includes provisions for three grant programs for (1) dealing with the backlog of cases, (2) automated systems, and (3) CASA programs. Sen. No. 2272 has been referred to the Senate Judiciary Committee. Although it is not anticipated that either bill will pass in this Congress, state judicial leaders are building a good base of support for passage in the next Congress.

In addition to following this legislation, we have also been devoted to responding to a policy interpretation question (PIQ) issued by the Children's Bureau regarding open court hearings and the confidentiality of child welfare information. The PIQ states that if confidential information—as defined by Titles IV-B and IV-E of the Social Security Act and the Child Abuse Prevention and Treatment Act (CAPTA)—is discussed in open court hearings, the state could be in jeopardy of losing its federal child welfare funding.

Since several state courts have been operating under open court rules for years, this PIQ raises the specter of conflict between federal policy and state practices. Officials within the Children's Bureau, in recognition of the potential for conflict, established a discussion group to develop a strategy for resolving the problem. The result of the discussion group's meeting was a consensus that CAPTA should be modified to allow states the option of open court hearings in child welfare cases, which potentially could be accomplished during CAPTA reauthorization. CAPTA is currently authorized through fiscal year 2001.

DOMESTIC VIOLENCE

The Violence Against Women Act (VAWA) is scheduled for reauthorization this session. There appears to be broad support for the program. Any delay in passage of the reauthorization bill will be due to the pressure of other concerns (e.g., appropriations) rather than debate over the bill itself. In May, reauthorization by the House of Representatives showed some movement when House Bill No. 1248 passed the Subcommittee of the House Judiciary Committee. Courts have an interest in amending VAWA to specifically authorize state courts to be direct applicants for VAWA funds. The Senate version of the bill opens up grants to "state and local courts," and the prime sponsor of H.R. No. 1248, Congresswoman Connie Morella (R-Md.), has expressed support for including the language in the House bill.

Also of interest to state courts, the U.S. Supreme Court on May 15 struck down the portion of VAWA that authorized women who were victims of gender-motivated violence to sue their attackers in federal court. In the case *United States v. Morrison*, a five-to-four majority continued its recent pattern of limiting congressional power under the Commerce clause, based on the rationale it espoused in the 1995 case *United States v. Lopez*.

FEDERALISM

Protecting the integrity of the state judicial process from federal encroachment is a perennial issue. At any given time there are at least half a dozen serious proposals that would replace state discretion with federal requirements. This year is no exception.

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In this case the inertia caused by partisan bickering has given courts an advantage, in that several of the most serious threats are controversial—usually on other grounds—and cannot muster the consensus necessary to win passage. At present the list includes bills dealing with asbestos cases, mass torts, product liability reform, public "takings" of private property, and victims' rights.

The proposed amendment to the U.S. Constitution regarding victims' rights illustrates the kind of problem these bills pose for courts. CCJ opposed the proposed resolution on both practical and federalist grounds, arguing that the states had already taken steps to address the issues and that legislation, not a constitutional amendment, would be a more

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